

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

GRAYCO, INC.

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and Grayco, Inc. to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **ACode@** means the Code of Virginia (1950), as amended.
2. **ABoard@** means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code ' ' 62.1-44.7 and 10.1-1184.
3. **ADEQ@** means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code ' 10.1-1183.
4. **ADirector@** means the Director of the Department of Environmental Quality.
5. **ARegional Office@** means the Tidewater Regional Office of DEQ.
6. **AOrder@** means this document, also known as a consent special order.
7. **APermit@** means Virginia Water Protection (VWP) Permit No. 00-0241 which is the Commonwealth of Virginia's ' 401 Water Quality Certification.
8. **ARegulations@** means 9 VAC 25-210-10 *et seq.* - Virginia Water Protection Permit Program Regulation.
9. "Grayco" means Grayco, Inc., certified to do business in Virginia and its affiliates,

partners, subsidiaries, and parents.

SECTION C: Findings of Facts and Conclusions of Law

1. Grayco is constructing the Founders Pointe subdivision on Sugar Hill Road in Isle of Wight County. The subdivision is located adjacent to Ragged Island Creek, a tributary to the James River and Chesapeake Bay. The Permit, issued to Grayco on September 28, 2001, authorizes impacts to 1.19 acres of nontidal wetlands at Founders Pointe.
2. Sections 62.1-44.5 of the Code and 25-210-50 of the Regulations require that discharges to state waters or alteration of state waters be done in accordance with a permit issued by the Board
3. The Permit requires 2.38 acres of wetlands compensation of which 0.43 acres of compensation are satisfied by preserving upland buffers. The remaining 1.95 acres of compensation is to be satisfied by off-site wetlands creation. Part I.G.4 of the Permit requires that the wetlands creation be completed prior to filling the wetlands.
4. During an inspection of the Founders Pointe property on January 8, 2003, DEQ staff documented that the majority of wetlands on site had been impacted before the wetlands creation had started. It appeared that approximately 1.065 acres of wetland impacts had occurred via clearing, grubbing, and filling.
5. Also noted during the January 8, 2003 site inspection, was inadequate or nonexistent upland buffer flagging and nonexistent signage marking the preserved wetlands and upland buffers. Clear flagging of upland buffers and wetlands is required prior to commencement of work, in accordance with Part I.F.4 of the Permit. Signage marking these areas is also required in accordance with Part I.F.10 of the Permit.
6. The final mitigation plan for the off-site wetlands creation was approved on November 27, 2002. Work started on the approved wetlands creation project on approximately April 1, 2003.
7. Notice of Violation No. 93-01-TRO-001 was issued to Grayco on February 5, 2003 in regard to the activities described above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Grayco, and Grayco agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Grayco, and Grayco voluntarily agrees to pay a civil charge of \$11,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall include Grayco's Federal Identification Number and shall note that payment is being made as required by this Order. Payment shall be made by check payable to the "Treasurer of Virginia" delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Grayco, for good cause shown by Grayco.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in any permit issued by the Board.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the site as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, Grayco admits the jurisdictional allegations, but does not admit the factual findings and conclusions of law contained herein.
5. Grayco consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Grayco declares it has received fair and due process under the Administrative Process Act, Code ' ' 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
7. Failure by Grayco to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Grayco shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Grayco must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Grayco shall notify the Director or the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full

compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within 3 days of learning of any condition listed above, which Grayco intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Grayco. Notwithstanding the foregoing, Grayco agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Grayco. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Grayco from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

By its signature below, Grayco voluntarily agrees to the issuance of this Order.

And it is so Ordered this _____ day of _____, 2003.

Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

Grayco voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _ day of

_____, 2003, by Horace A. Gray, who is president of Grayco, Inc., on behalf of the Corporation.

Notary Public

My commission expires: _____.

APPENDIX A

GRAYCO, INC.

Grayco shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. Comply with all the provisions of the Permit.
3. By March 1, 2004 complete the wetlands mitigation in accordance with the Permit.
4. Notify DEQ by certified letter that the wetlands mitigation has been completed within 10 days of completion.